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College Cost Reduction and Access Act: A Good Step, but Only a Step

I. INTRODUCTION

Because of the prohibitive costs, around 400,000 students each year are not able to attend college directly after high school.¹ In an effort to ease this economic strain, Congress passed and President George W. Bush signed the College Cost Reduction and Access Act (CCRAA) in September 2007.² The CCRAA reduces subsidies to private lenders,³ increases funding for Pell Grants,⁴ and lowers loan interest rates for students⁵ at no additional cost to taxpayers.⁶ The CCRAA represents the largest increase in financial support for students since the GI Bill.⁷ This Note will argue that by decreasing the subsidies to private lenders and increasing funding for Pell Grants, Congress is taking an important step in making a college education economically feasible for all students.⁸ The CCRAA, however, is only a small step towards making affordable higher education a reality for all students.⁹ To keep a college education a viable option for all students, federal grant money must be increased in the coming years.¹⁰

First, Part II of this Note will look at the congressional

1. See Michael Mumper, *The Future of College Access: The Declining Role of Public Higher Education in Promoting Equal Opportunity*, 585 *Annals* 97, 106 (2003).

2. See Marcia Cass, *Conferees Meet on Higher Ed Bill*, *Banking Daily*, Sept. 7, 2007.

3. See College Cost Reduction and Access Act, H.R. 2669 § 301 (2007).

4. See H.R. 2669 § 102 (2007).

5. See H.R. 2669 § 201 (2007).

6. See Senator Edward Kennedy, Press Release, *Kennedy Opens Floor Debate On College Cost Reduction and Access Act*, Sept. 7, 2007, available at http://kennedy.senate.gov/newsroom/press_release.cfm?id=8750434D-2F4F-4FBE-A24F-9A3AE90AEA55.

7. *Id.*

8. See *infra* Part IV.

9. *Id.*

10. *Id.*

involvement in access to higher education since the 1960s.¹¹ Then, Part III will analyze the legislative history of the bill and the contents of the bill itself, with a particular focus on the changes in Pell grants for students and the corresponding reduction in aid to private student loan lenders.¹² Finally, Part IV of this Note will examine the effects of the CCRAA on the government, students, and private lenders and propose what should happen next.¹³

II. CONGRESSIONAL INVOLVEMENT IN ACCESS TO HIGHER EDUCATION

Congress recognized both the importance of higher education as well as the importance of making it available to all students when it passed the Higher Education Act of 1965.¹⁴ The purpose of the Higher Education Act was to get states and non-profit organizations to offer low-interest loans to students.¹⁵ The Higher Education Act established the Guaranteed Student Loan Program (GSLP), which authorized the Department of Education to give incentives to private lenders in order to obtain better loan rates for students.¹⁶ These incentives were deemed necessary because student loans are costly for lenders.¹⁷ The loans are costly because students often have no credit history, no assets, and are

11. See *infra* Part II.

12. See *infra* Part III.

13. See *infra* Part IV.

14. See 20 U.S.C. § 1071 (2005); see also Timothy Naegele, *The Guaranteed Student Loan Program: Do Lenders' Risk Exceed Their Rewards?*, 34 HASTINGS L.J. 599, 599 (1983) ("In 1965, Congress responded to a growing need for financial assistance to students in higher education by enacting the Higher Education Act of 1965.").

15. 20 U.S.C. § 1071 (2005).

16. See Naegele, *supra* note 14, at 599; see also Eric Hallstrom, Note, *HERE WE GO AGAIN - The Conversion of Qualified Scholarship Funding Corporations from Nonprofit to For-Profit Status: What We Can Learn from the Health Care Conversion Bonanza*, 25 IOWA J. CORP. L. 659, 664 (2000) ("Because of the high risk of default associated with student loans, interest rates are significantly higher than most borrowers could afford in the normal market. By 'guaranteeing' these loans, the government reduces the risk to banks and thus brings down their interest rates.").

17. Evelyn Brody, *Paying Back Your Country Through Income-Contingent Student Loans*, 31 SAN DIEGO L. REV. 449, 493 (1994).

more likely to default on their loans.¹⁸ The GSLP, though originally only available to low-income students, was made available to all students in 1978.¹⁹ Since 1978, Congress has had a policy of insuring the loans that private lenders give to students so that if students default, the federal government will make sure that the lender gets reimbursed for most of the loan.²⁰ The intended effect of the subsidies given to lenders by Congress was to reduce interest rates for student loans.²¹

Despite almost forty years of successful implementation, the dark side of the Higher Education Act began to show in 2003 when it came to light that private student loan lenders were taking advantage of the Federal Government.²² Jon Oberg, a researcher for the Department of Education, warned his supervisors in 2003 that private lenders were illegally taking hundreds of millions in subsidies from the Department.²³ Congress had guaranteed non-profit lenders a 9.5% rate of return on student loans because of the risk and cost involved with those loans.²⁴ Congress eliminated this program in 1993, but kept the rates for existing loans.²⁵ However, private loan companies schemed to retain this return rate by giving false information regarding the number of old loans they continued to service.²⁶ Despite Oberg's warnings of this loan volume inflation, his supervisors at the Department of Education ignored the issue and went so far as to tell Oberg to stop looking

18. *See id.*

19. *See* Naegele, *supra* note 14, at 601.

20. *See* Amanda Foster, Comment, *All or Nothing: Partial Discharge of Student Loans is Not the Answer to Perceived Fairness of the Undue Hardship Situation*, 16 WIDENER L.J. 1053, 1056-57 (2007); *see also* 20 U.S.C. § 1071 (2000) ("to guarantee a portion of each loan insured under a program of a State or of a nonprofit private institution or organization").

21. *See Fair Sailing for Young Scholars*, THE ECONOMIST, (Aug. 2007) available at http://www.economist.com/research/articlesBySubject/displaystory.cfm?subjectid=2133650&story_id=9587850 [hereinafter *Fair Sailing*].

22. *See* Sam Dillon, *Whistle-Blower on Student Aid is Vindicated*, N.Y. TIMES, May 7, 2007, available at http://www.nytimes.com/2007/05/07/washington/07loans.html?_r=1&oref=slogin.

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.*

into the impropriety of student lending practices.²⁷ Department of Education Secretary Rod Paige and his successor, Margaret Spellings, ignored the warnings for three years.²⁸ They contended that current laws did not enable them to stop the payments, and only Congress had the power to do so.²⁹ In January 2007, the Department of Education finally acted, informing lenders by mail that their subsidies had been cut off.³⁰ Unfortunately, this happened only after private student loan lenders had improperly received hundreds of millions of dollars in subsidies from the federal government.³¹ This scandal led to the College Cost Reduction and Access Act, discussed below.

III. THE COLLEGE COST REDUCTION AND ACCESS ACT

The CCRAA is comprised of eight different titles, but only three titles will be discussed in this Note:³² the first title, which increases the amount of the maximum Pell Grant;³³ the third title, which eliminates “Exceptional Performer Status” for lenders and reduces lender insurance percentages;³⁴ and the seventh title, which establishes the “Competitive Loan Auction Pilot Program.”³⁵ These three titles represent the most significant

27. *Id.* (“The department ‘does not have an intramural program of research on postsecondary education finance,’ the supervisor, Grover Whitehurst, a political appointee, wrote in a November 2003 e-mail message to Mr. Oberg, a civil servant who was soon to retire. ‘In the 18 months you have remaining, I will expect your time and talents to be directed primarily to our business of conceptualizing, competing and monitoring research grants.’”).

28. *See* Dillon, *supra* note 22 (“Education Secretary Rod Paige and his successor, Margaret Spellings, argued repeatedly that under existing law they were powerless to stop the payments and that it was Congress that needed to act.”).

29. *Id.*

30. *Id.*

31. *Id.*

32. For a more extensive discussion of the interest rate reductions for students and the consequences thereof, *see* Philip G. Schrag, *Federal Student Loan Repayment Assistance for Public Interest Lawyers and Other Employees of Governments and Nonprofit Organizations*, 36 HOFSTRA L. REV. 27 (2007).

33. *See* H.R. 2669 § 102 (2007).

34. *See* H.R. 2669 §§ 301-06 (2007).

35. College Cost Reduction and Access Act, H.R. 2669 § 701 (2007).

changes in public access to higher education, and will be discussed in detail below.

A. *Pell Grants*

Pell Grants are “need-based” awards, rather than loans, given by the federal government to low-income students in graduate or undergraduate institutions.³⁶ The amount of the award is based on the student’s “expected family contribution.”³⁷ The CCRAA increases the maximum Pell Grant Award from \$4,310 to \$5,400 by the year 2012.³⁸ More than half of the twenty billion dollars being invested in the CCRAA goes toward raising the maximum Pell Grant Award.³⁹

The Pell Grant program was initially established so financially disadvantaged students would be able to attend college.⁴⁰ In its first year of implementation, the program provided for seventy-eight percent of the average tuition cost at a public university.⁴¹ By the year 2000, however, it covered just thirty-nine percent of public university tuition.⁴² During this period, the government’s policy on federal student aid changed the system from one comprised primarily of grants to one made mostly of loans.⁴³ The growth in the loan-based system resulted in the failure to keep Pell Grant levels even with the ever-increasing costs of education.⁴⁴

36. Federal Pell Grant Program Description, <http://www.ed.gov/programs/fpg/index.html> (last visited Jan. 2, 2008).

37. *Id.* (“The EFC is the sum of: (1) a percentage of net income (remaining income after subtracting allowances for basic living expenses and taxes) and (2) a percentage of net assets (assets remaining after subtracting an asset protection allowance).”).

38. H.R. 2669 § 102.

39. See Kennedy, *supra* note 6.

40. Mumper, *supra* note 1, at 103.

41. *Id.*

42. *Id.*

43. *Id.*; see also Kathleen M. Shaw & Jerry A. Jacobs, *Preface: Community Colleges: New Environments, New Directions*, 586 ANNALS 6, 10 (2003).

44. See Mumper, *supra* note 1, at 104 (“The twenty years of growth in federal student loans and their growing cost to the federal treasury are undoubtedly a part of the reason for the decline in the Pell Grant program during the same period”).

Proponents of the bill cite numerous reasons why the increase in funding for Pell Grants was long overdue.⁴⁵ First, over time, the cost of education at the undergraduate and graduate levels has increased dramatically.⁴⁶ In the past twenty years, costs of attending both public and private universities in the United States have increased twice as fast as the median household income, translating to an increase in costs of more than two hundred percent.⁴⁷ Because of the rapid increase in the cost of education, the lack of Pell Grant funding, and the fact that household incomes have lagged behind the education costs, the percentage of students taking private loans has almost tripled in the past ten years.⁴⁸ As of 2003, only twenty-three percent of college students were recipients of Pell Grants, and even the average Pell Grant recipient received only a third of the cost of attending a four-year public university.⁴⁹ Low-income students forced to take out loans instead of receiving Pell Grants are more adversely affected than other students because they will face more difficulties in paying off their loans.⁵⁰ Despite the decreased interest rates, some lower income students default on their loans or face extreme hardships in trying to repay them.⁵¹ Even with an increase in the maximum award to \$5,400, the award is still under the average tuition and fees cost of a four-year public university for the 2005-06 school year (\$5,491).⁵² The maximum award does not come close to the average tuition at a private university, which was over \$30,000.⁵³ Thus, the maximum Pell Grant Award does

45. See Michael Kinsley, *The Wacky World of Student Loans*, SLATE, Sept. 15, 2007, <http://www.slate.com/id/2174000/> (“If you know anything at all about the federal student loan program, you will not have been surprised by the scandal of recent months. The only amazing thing is that it has taken so long to arrive”).

46. See Kennedy, *supra* note 6.

47. *Id.*

48. See Foster, *supra* note 20, at 1054.

49. See Kennedy, *supra* note 6; see also JACQUELINE KING, 2003 STATUS REPORT ON THE PELL GRANT PROGRAM, Am. Council on Edu., at ix (Oct. 2003).

50. Mumper, *supra* note 1, at 104.

51. *Id.*

52. See AOL Money and Finance, *Paying for College: College Tuition Costs*, http://money.aol.com/basics/3canvas/_a/paying-for-collegecollege-tuition-costs/20050225133709990001?sem=1&ncid=AOLPRF00170000000003 (last visited Jan. 2, 2008).

53. Rob Kelley, *Average College Cost Breaks \$30,000*, CNN, <http://money.cnn.co>

not even meet tuition needs, let alone housing, books, and other living expenses; additionally, many students do not receive the maximum award.⁵⁴

1. Objections to the CCRAA

One argument against the CCRAA is made in a statement released by the Secretary of the Department of Education, Margaret Spellings, in which she stated that the CCRAA spends too much money lowering interest rates for students who have already graduated.⁵⁵ Instead, she favors President Bush's proposal which put all of the funding into Pell Grants.⁵⁶ She based this claim on the fact that the bill gives thirty-eight percent of its funding to Pell Grants.⁵⁷ She claims that President Bush's budget proposal would put almost all of the proposed savings into Pell Grants.⁵⁸ However, many students fail to qualify for Pell Grants and still need to borrow money in order to attend college.⁵⁹ Even half of the students who do qualify for Pell Grants still have to borrow money.⁶⁰ President Bush's initial proposal would also have taken fewer subsidies away from private lenders.⁶¹ President Bush planned to cut subsidies by over fifteen billion dollars, while the CCRAA cuts the subsidies by over twenty-two billion dollars.⁶²

A final objection to the CCRAA is that while it cuts around \$18.5 billion in the budget, it ends up spending around seventeen billion dollars of that cut.⁶³ Republicans in the House of

m/2006/10/24/pf/college/college_costs/index.htm (last visited Jan. 2, 2008).

54. See *Fair Sailing*, *supra* note 21.

55. See Statement by Secretary Spellings on College Cost Reduction Act of 2007, July 10, 2007, available at <http://www.ed.gov/news/pressreleases/2007/07/07102007.html>.

56. See *id.*

57. *Id.*

58. *Id.*

59. 110 CONG. REC. H7539 (daily ed. July 11, 2007) (statement of Rep. Davis).

60. *Id.*

61. Kevin Drawbaugh, *Bush to Sign Bill Cutting Student Lender Subsidy*, REUTERS, Sept. 6, 2007, <http://www.reuters.com/article/fundsFundsNews/idUSN0636448320070906>.

62. See Statement by Secretary Spellings, *supra* note 55.

Representatives have questioned the idea of spending what could have been a huge cut in the budget.⁶⁴ They contend that the seventeen billion dollar increase could also lead to even more costs in the future for taxpayers.⁶⁵ Despite the concerns by House Republicans, a report by the Congressional Budget Office found that the CCRAA would actually reduce spending by seven hundred and fifty million dollars over the next five years, and by three and a half billion over the next five years after that despite the increase in funding for Pell Grants.⁶⁶

B. *Lender Reductions*

Sections 301 and 303 of the CCRAA reduce payments from the federal government to private lenders.⁶⁷ Before passage of the CCRAA, lenders designated “exceptional performers” were reimbursed for ninety-nine percent of a loan’s outstanding principal and accrued interest upon a student borrower’s default.⁶⁸ Ninety percent of student loans were made by lenders designated as exceptional performers.⁶⁹ Private lenders not given “exceptional performer status” were reimbursed for at least ninety-seven percent of the loan’s outstanding principal and accrued interest upon a borrower’s default.⁷⁰ The CCRAA eliminates the “exceptional performer status” and all lenders will

63. 110 CONG. REC. H7530 (daily ed. July 11, 2007) (statement of Rep. McKeon).

64. *See id.*

65. *See* 110 CONG. REC. H7534 (daily ed. July 11, 2007) (statement by Rep. Westmoreland) (“The government is going to start doing it all...the taxpayers end up holding the bag”).

66. CONG. BUDGET OFFICE, CONGRESSIONAL BUDGET OFFICE COST ESTIMATE: H.R. 2669 COLLEGE COST REDUCTION AND ACCESS ACT 1 (2007), <http://www.cbo.gov/ftpdocs/86xx/doc8643/hr2669pago.pdf> [hereinafter CBO COST ESTIMATE].

67. College Cost Reduction and Access Act, H.R. 2669 §§ 301-07 (2007).

68. U.S. GOV. ACCOUNTABILITY OFFICE, FEDERAL FAMILY EDUCATION LOAN PROGRAM: ELIMINATING THE EXCEPTIONAL PERFORMER DEFINITION WOULD RESULT IN SUBSTANTIAL SAVINGS WITHOUT ADVERSELY AFFECTING THE PROGRAM, 3 (2007) [hereinafter GAO].

69. *Id.*

70. *Id.*

now be reimbursed for only ninety-five percent of a loan's outstanding principal and accrued interest.⁷¹

1. ARGUMENTS FOR REMOVING LENDER BENEFITS

The United States Government Accountability Office (GAO) released a report in July 2007 recommending the elimination of “exceptional performer status” for private student loan lenders.⁷² The report found that the “exceptional performer program” did not “materially” affect loan servicing and that the number of default claims had not declined since the program's implementation.⁷³ The elimination of the program will save the federal government over seventeen billion dollars in the next five years, and over forty million dollars in the subsequent five years by not having to pay the higher rate of reimbursement to the former “exceptional performers.”⁷⁴ Lenders admitted that even though they were designated as an “exceptional performer,” this designation did not change the services they provided for students.⁷⁵ The GAO also reported that there was no difference between the ten percent of lenders without the designation and the other ninety percent who were designated as “exceptional performers.”⁷⁶ In sum, the GAO concluded that because giving lenders exceptional performer status did not improve loan servicing nor reduce the number of defaults, there was no need to preserve the status or the two percent benefit.⁷⁷ Congress agreed by using the CCRAA to eliminate “exceptional performer status” and reduce the default lender insurance percentage to ninety-five percent.⁷⁸

The reduction in benefits to private student loan lenders may reduce the number of lenders and the amounts that existing

71. H.R. 2669 § 303.

72. See GAO, *supra* note 68, at 3.

73. *Id.* at 6.

74. CBO COST ESTIMATE, *supra* note 66, at 3.

75. GAO, *supra* note 68, at 13.

76. *Id.*

77. See GAO, *supra* note 68.

78. H.R. 2669 §§ 301, 303.

lenders are willing to extend to students (and thus increase the amount of direct loans from the federal government); however, increasing government involvement in the student loan lending industry has some practical benefits.⁷⁹ The government can borrow money for student loans at three or four percent interest, which is more cost effective than paying seven or eight percent to private lenders in order to ensure adequate loan funds for students.⁸⁰ The federal government has its own loan program,⁸¹ which is less expensive to operate than giving subsidies to private lenders.⁸² A study by the Congressional Budget Office and the Treasury Department found that using private lenders was less efficient than using direct loans from the federal government because of the profits and subsidies accrued by private lenders.⁸³ However, direct federal loans currently account for only twenty-five percent of all student loans.⁸⁴ It is possible that the Federal Government may not be able to keep up with the increased volume of direct loans from their programs that were originally handled by private lenders.⁸⁵

Senator Ted Kennedy derides the benefits offered by private student lenders, saying that they are “phantom benefits” that “few borrowers ever receive.”⁸⁶ In addition, most students on

79. See Kinsley, *supra* note 45.

80. See *id.* (“Well, the government itself borrows the odd nickel to finance the national debt. This borrowing, obviously, is also guaranteed by the government. For that reason, it carries an interest rate of only 3 percent or 4 percent. If the government can borrow money at 3 percent or 4 percent, why should it be paying 7 percent or 8 percent for the privilege of guaranteeing loans to someone else? Wouldn't it make more sense for the government to loan out the money itself?”).

81. See The William D. Ford Federal Direct Loan Program, <http://www.ed.gov/offices/OSFAP/DirectLoan/index.html> (last visited Jan. 2, 2008).

82. See Kinsley, *supra* note 45.

83. CONG. BUDGET OFFICE, USING AUCTIONS TO REDUCE THE COST OF THE FEDERAL FAMILY EDUCATION LOAN PROGRAM (1998), www.cbo.gov/ftpdoc.cfm?index=644&type=0 [hereinafter CBO REPORT].

84. See Kinsley, *supra* note 45.

85. 110 CONG. REC. H7530 (daily ed. July 11, 2007) (statement by Rep. McKeon) (“Further, the government-run program only handles 20 percent of the loans today. It would be overwhelmed with the new business and shut done [sic], as it has been in the past, when large volumes shifted to the program”).

86. See Kennedy, *supra* note 6 (noting that the benefits offered by lenders included reduction in interest rates).

average only save about one hundred dollars through the reduction in interest rates offered by the government.⁸⁷ By increasing Pell Grant Awards instead of giving subsidies to lenders who may or may not reward students, some students will receive an additional four thousand dollars over four years, which will save them over six thousand dollars in interest payments later on.⁸⁸

The rampant violations of the Higher Education Act by private student loan lenders as well as the financial aid departments at various universities serves to justify the elimination of subsidies for private lenders.⁸⁹ The Higher Education Act prohibits unsolicited mailings to students and any sort of bribes to university officials.⁹⁰ A report issued by Senator Kennedy detailed a litany of violations by both schools and lenders, including, but not limited to: monetary compensation for placement on preferred lender lists,⁹¹ bribes with non-monetary “treats,”⁹² hosting receptions for universities in exchange for more loans,⁹³ the offering of positions on lender advisory boards to financial aid officers (which often resulted in the receipt of lavish gifts),⁹⁴ stakes in the lending company, and plain monetary bribery to individuals.⁹⁵ The head of financial aid at Columbia University in New York was suspended after receiving one hundred thousand dollars in stock options from a student lender.⁹⁶ Other student loan officials at universities held jobs simultaneously with their university and with the banks providing the loans for their school.⁹⁷

To prevent these violations, the Department of Education

87. *Id.*

88. *Id.*

89. See generally Senator Edward Kennedy, *Report on Marketing Practices in the Federal Family Education Loan Program*, June 14, 2007 (the report listed numerous violations on all sides despite warnings by the Department of Education).

90. See 20 U.S.C. §§ 1078-99 (2000).

91. Kennedy, *supra* note 89, at 11.

92. *Id.*

93. *Id.* at 16-17.

94. *Id.*

95. *Id.*

96. Lisa Myers, *Student Financial Aid Scandal Grows*, MSNBC, May 10, 2007, <http://www.msnbc.msn.com/id/18598574>.

97. Myers, *supra* note 96.

put together lists of examples of what would and would not be a violation of the Higher Education Act and distributed these lists to lenders and universities in 1995.⁹⁸ The purpose of the regulation in the Higher Education Act was to ensure that the advice students received from their financial aid offices was fair and impartial.⁹⁹ The Department of Education noted that this was an area of concern because of students' reliance on their school's financial aid office in these matters, and because a student relying on a bribed financial aid official will not be getting impartial financial advice.¹⁰⁰ The CCRAA should send a message to lenders that the Department of Education will not tolerate further abuses. Without passage of the CCRAA, it is likely that such violations of the Higher Education Act would have continued to occur as the Department of Education had been unwilling to look into alleged violations.¹⁰¹

2. Arguments Against Removing Lender Benefits

Student loans are one of the riskiest and least rewarding types of loans for lenders to take on.¹⁰² Opponents contend that reducing the subsidies to lenders will result in some combination of banks leaving the student loan business, smaller lenders being unable to compete, and unaffordable interest rates for the students who can find loans.¹⁰³ The president and CEO of the American Student Loan Services, Brian Skowronski, contends that the CCRAA is cutting costs at the expense of small business owners.¹⁰⁴

98. See Kennedy, *supra* note 89, at 6-7.

99. See *id.* at 11 (quoting the 1995 Dear Colleague Letter by Department of Education).

100. See *id.*

101. See Dillon, *supra* note 22.

102. See Brody, *supra* note 17, at 458.

103. See *Fair Sailing*, *supra* note 21, at 2 ("The biggest risk in cutting the interest-rate subsidies is that banks may leave student lending *en masse*, or that smaller lenders may be forced out of the market. This would mean less choice for students and possibly a large number of borrowers swamping the government programme.").

104. *College Cost Reduction Act Will Increase Cost for Students*, PR NEWSWIRE, June 13, 2007, <http://www.prnewswire.com/cgi-bin/stories.pl?ACCT=104&STORY=/www/story/06-13-2007/0004607781&EDATE=>.

He believes that these cuts will force many of the smaller lenders out of business and leave fewer options for students.¹⁰⁵ If the smaller lenders are in fact forced out of the student loan business, this could be cause for concern as these lenders provide for more than fifty percent of the student loans, and their competition fosters lower interest rates for students.¹⁰⁶ However, there is no reason to believe that a loan from a smaller lender would be any better than a loan from one of the bigger lenders.¹⁰⁷ The real concern would arise if the small business lenders were in fact forced out of the industry, larger lenders do not pick up the slack, and the government's Direct Loan program is unable to fill the void.¹⁰⁸ Senator Kennedy points out, however, that the smaller lending companies who claim to be in danger "simply sell the loans to the larger lenders, soon after the loans are made" and thus will not be missed.¹⁰⁹ Finally, the Competitive Loan Auction Pilot Program, discussed below, will address many of these concerns.

Larger private lenders may have already started feeling the effects of the CCRAA, as Nelnet, a leading private student loan lender, has stated publicly that it will get rid of four hundred jobs due to the CCRAA and the expected loss of profits.¹¹⁰ Another private student loan lender, Sallie Mae, finds itself in the midst of a controversy because of the CCRAA.¹¹¹ Sallie Mae has publicly admitted that its profits will be reduced by the CCRAA, as the new regulations will hurt its profits from student loans.¹¹² Because of these reductions in projected profits, a group headed by J.C.

105. *Id.*; see also Joe Belew, *Reform Might Hurt Students*, USA TODAY, July 6, 2007, at 8A.

106. *College Cost Reduction Act Will Increase Cost for Students*, *supra* note 104; see also Belew, *supra* note 105, at 8A.

107. See Kinsley, *supra* note 45.

108. *College Cost Reduction Act Will Increase Cost for Students*, *supra* note 104 ("These are most certainly savings that the government's Direct Loan program can't come close to duplicating.").

109. See Kennedy, *supra* note 89.

110. Drawbaugh, *supra* note 61.

111. Andrew Ross Sorkin and Michael J. de la Merced, *Deal at Risk, Buyers Warn Sallie Mae*, N.Y. TIMES, Sept. 27, 2007.

112. See Thomas Heath and David S. Hilzenrath, *Sallie Discloses Billing Audit; Lender Also Expects Profit Reduction*, WASH. POST, Dec. 28, 2007, at D1.

Flowers & Co. that had made a bid to buy Sallie Mae, decreased its bid.¹¹³ While the group initially offered \$60 per share, it has decreased the bid to an initial \$50 per share, and a possible payout of up to ten more dollars per share.¹¹⁴ The matter is now in litigation, but a lengthy discovery will keep it from coming to trial until at least July 14, 2008.¹¹⁵ Perhaps more troubling for Sallie Mae are pitches being made by Democratic Presidential Candidates Barack Obama and Hillary Clinton to eliminate the Federal Family Education Loan Program.¹¹⁶ If this program is eliminated, it would spell further trouble for Sallie Mae and other private lenders.¹¹⁷

Some believe that maintaining a profitable industry for private lenders is of utmost importance to students.¹¹⁸ If the industry remains profitable, lenders will be willing to continue taking risks on students.¹¹⁹ The cuts in subsidies and the auction program may put lenders out of business.¹²⁰ This balancing act may well determine the success of the CCRAA as well as the ability of students to obtain affordable loans from private lenders and the existence of these lenders altogether.

113. See William Launder, *Buyout Group Downsizes Sallie Mae Bid*, AM. BANKER, Oct. 3, 2007.

114. See *id.*

115. See *Sallie Mae to Wait for Takeover Trial*, THE LOS ANGELES TIMES, Nov. 6, 2007, at 4.

116. See Anne Chaker, *Parsing Candidates' Student-Loan Proposals*, THE WALL ST., (Oct. 25, 2007) (This program used lenders like Sallie Mae to deliver loans to students) at D1. John Edwards also makes this pitch prior to dropping out of the race. See *id.*

117. *Id.*

118. See Naegle, *supra* note 14, at 601 ("The linchpin of the GSLP has been the willingness of private lenders to participate in the program").

119. See Naegle, *supra* note 14, at 601-02 ("Their continued participation requires that the federal government make GSLP loans sufficiently attractive investments by achieving a balance between the lenders' risks and the return that they can expect on their investments"); see also 110 CONG. REC. H7534 (daily ed. July 11, 2007) (statement by Rep. Westmoreland) ("But a bank is not going to loan money if they can't make money...the reality is that the private sector is going to get out of making these loans").

120. Drawbaugh, *supra* note 61.

C. *Competitive Loan Auction Pilot Program*

The Competitive Loan Auction Pilot Program will decide which private student loan providers in each state will have exclusive rights to originate Federal “PLUS” loans¹²¹ in that state.¹²² The auctions in each state will be administered every two years by the Secretary of Education, and the two lowest bidders will have exclusive rights to the loans during the two year period.¹²³ Lenders are only eligible to bid if they participate in a prequalification process that ensures a level of borrower benefits, servicing requirements, and assesses the lender’s capacity for loans.¹²⁴ This program will balance the amount of subsidies necessary to ensure that private lenders keep giving loans to students.¹²⁵ The rationale is that the government will be able to adjust subsidies so that students can continue to receive loans with relative ease and efficiency in pricing.¹²⁶ Similar auction programs are used by the Federal Government to determine rights in broadcasting, oil drilling, and timber-cutting.¹²⁷

The Competitive Loan Auction Pilot Program responds to the violations by lenders discussed earlier in this Note and detailed in Senator Kennedy’s report.¹²⁸ Before the program, there was no way for the government to regulate the abnormally-large profits

121. See Federal Pell Grant Program Description, *supra* note 36 (Federal “PLUS” loans are loans for parents or graduate students that have been traditionally insured by private lenders who were reimbursed by the Federal Government if the borrowers defaulted).

122. H.R. 2669 § 701.

123. *Id.*

124. *Id.*; see also Haley Chitty & Justin Draeger, Summary of the College Cost Reduction Act (H.R. 2669), Nat’l Ass’n of Student Fin. Aid Adm’rs (2007), <http://www.nasfaa.org/publications/2007/G2669Summary091007.html> (“If no winning bids are made, the Secretary shall designate a lender of last resort in each state. Lenders that want the lender of last resort designation would be required to submit an application to the Secretary”).

125. See Kennedy, *supra* note 89.

126. *Id.*

127. *Id.*

128. 110 CONG. REC. H7537 (daily ed. July 11, 2007) (statement by Mr. Petri) (“Given the tremendous waste, fraud and unethical relationships that have been uncovered in this program over the last 6 months, it’s clear that the guaranteed loan program is fundamentally and structurally flawed”).

obtained by student lenders who over-charged students for their loans.¹²⁹ Proponents of the CCRAA believe that the Competitive Loan Auction Pilot Program will lower the costs of loans for students.¹³⁰ Lenders would be competing with each other and would only be concerned with the cost of their bid in each state rather than having to recruit from financial aid offices at every university.¹³¹ The Congressional Budget Office concluded that implementing this loan program would be easy and inexpensive for both private lenders and the federal government.¹³² If private student lenders are only dealing with the Secretary of Education and not individual universities, they presumably will not be able to bribe the financial aid officials at the universities. However, it remains to be seen whether the new program will be free of corruption.

IV. CONCLUSION

The CCRAA is an important step in the right direction, but it is only a first step. A college education is a huge factor in one's ability to earn a living, yet not everyone can afford the education.¹³³ More and more jobs in the future will only be available to those with a college education.¹³⁴ Over the past thirty years, the gap between income levels and the cost of attending a public university has widened considerably.¹³⁵ Unfortunately, the levels of Pell Grant awards have not kept up with costs.¹³⁶ As a

129. CBO REPORT, *supra* note 83.

130. 110 CONG. REC. H7537 (daily ed. July 11, 2007) (statement by Mr. Petri).

131. *See* CBO REPORT, *supra* note 83.

132. *See id.*

133. 110 CONG. REC. H7535 (daily ed. July 11, 2007) (statement by Rep. Miller) (“In today’s competitive job market, a college education often makes all the difference. Americans with college degrees can earn 60 percent more than those with only a high school diploma. So in the interests of individuals, this is very, very important”).

134. 110 CONG. REC. H7542 (daily ed. July 11, 2007) (statement by Rep. Levin) (“In 2004, a report by Michigan’s Lt. Governor John Cherry’s Commission on Higher Education and Economic Growth laid out how two-thirds of the jobs created in the next decade will require post-secondary education and training”).

135. *See* Kennedy, *supra* note 6.

136. *Id.*

result, students from families who make less than \$25,000 a year are less than half as likely to attend college as students from families who earn greater than \$50,000 a year.¹³⁷ While there are a number of factors contributing to this circumstance, the discrepancy is much greater than it was when Pell Grants were able to provide for a much higher percentage of college tuition when the program was first implemented.¹³⁸

In 2003 Michael Mumper, a professor at Ohio State University, wrote that “[p]ublic higher education is rapidly becoming a barrier to equal opportunity in America rather than its promoter,” because of discrepancies noted above.¹³⁹ He reasoned that the issue was not so much the lack of spending by the federal government, but that the funding went to programs like lender subsidies that tended to benefit middle and higher income families.¹⁴⁰ Mumper recommended a reduction in subsidies to middle and higher income students and an increase in money to help “rebuild the crumbling Pell program.”¹⁴¹

Now, Congress has taken the first step in making a public university education available to every student who wants it. The CCRAA is a significant first step because it comes at no additional cost to the taxpayer, instead taking its funds from former benefits to private student lenders.¹⁴² Now that subsidies to private lenders have been cut, however, additional funding for monetary awards to students will have to come from somewhere. This means either

137. Mumper, *supra* note 1, at 107.

138. *Id.*

139. *Id.* at 115.

140. *Id.* at 115 (“The problem is not so much insufficient spending; it is that the funds are being spent on programs that help the middle - and upper-income families while ignoring the worsening situation of the most needy.”).

141. *Id.*

142. See College Cost Reduction and Access Act, H.R. 2669 (2007).

cutting funding from other programs, or raising taxes, both worthwhile alternatives when faced with the other option of neglecting funding for education and, in turn, our future.¹⁴³

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143. 110 CONG. REC. H7535 (daily ed. July 11, 2007) (statement by Rep. Miller) (“I think that it is important to note that the cost of this bill is the equivalent of 6 weeks in Iraq; 6 weeks in Iraq. Imagine that, for 6 weeks in Iraq, we can expand higher education to all who wish to achieve it in America. That investment has a return to our Treasury. It will grow our economy and prepare us for the future.”).